

**REMARKS**

In response to the Office Action dated July 3, 2008, the Assignee respectfully requests reconsideration based on the above amendments and on the following remarks.

Claims 1-20 are pending in this application.

**Improper Final Rejection**

The July 3, 2008 office action is improperly final. No amendments in the previous response necessitated the new grounds of rejection. As the Office can verify, the December 26, 2007 action was non-final and allowed claims 1-13 and 18-20. Claims 15-17 were only rejected under 35 U.S.C. § 101.

A response was submitted March 21, 2008. This response accepted the allowed claims, and the preamble of independent claim 15 was amended to overcome the § 101 rejection of claims 15-17. So, no amendments were made to overcome cited documents.

In the July 3, 2008 final office action, the allowance is withdrawn. The claims are rejected over newly cited documents.

So, the July 3, 2008 office action is improperly final. No amendments in the previous response necessitated the new grounds of rejection. The Office is respectfully requested to remove the final rejection of the claims and to reopen prosecution.

A telephone interview was conducted August 28, 2008 with Examiner Nelson. The undersigned explained that the final action was premature. Examiner Nelson said that PALMS shows the action as non-final, so she does not know why the action is mismarked as "final." Examiner Nelson said she would not withdraw the action, and she would not restart the period for reply. Examiner Nelson would, though, mail an interview summary stating that the action is non-final.

**Rejection under § 101**

The Office rejected claims 1-14 under 35 U.S.C. § 101 for claiming non-statutory subject matter. The Office suggests that the claims positively recite the apparatus that accomplishes the method. The preamble of independent claim 1, then, now recites a “*method of providing communications services by a computer.*” The Assignee thus respectfully asserts that claims 1-14 satisfy 35 U.S.C. § 101.

**Rejection of Claims under § 102 (b)**

The Office rejected claims 1-7, 15-16, and 18-19 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 7,043,225 to Patel, *et al.* A claim, however, is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8<sup>th</sup> Edition) (hereinafter “M.P.E.P.”).

Claims 1-7, 15-16, and 18-19 are not anticipated by *Patel*. These claims recite, or incorporate, many features that are not disclosed or suggested by *Patel*. Independent claim 1, for example, recites “*determining a subcontracted processing service is required from a different service provider*” and “*grouping together packets of data that require the subcontracted processing service.*” Independent claim 1 also recites “*subcontracting the grouped together packets of data to the different service provider to receive the subcontracted processing service*” and “*receiving a subcontracted result of the subcontracted processing service.*” Support for such features may be found at least at paragraphs [0025] through [0027] of United States Application No. 10/720,587 (Attorney Docket 030353), which is incorporated by reference. Subcontracting of processing services is also supported by paragraphs [0023] and [0024] of United States Application No. 10/720,941 (Attorney Docket 030006), which is also incorporated by reference. For the Examiner’s convenience, independent claim 1 is reproduced below, and independent claims 15 and 18 recite similar features.

[c01] A method of providing communications services by a computer, comprising:

- receiving a request for communications service at a computer, the request for communications service originating from a client communications device and communicated to a service provider of a communications network;
- communicating the request for communications service to other service providers;
- receiving an availability message at the computer from at least one of the other service providers, the availability message describing what routing paths are immediately available and what bandwidth is immediately available along each routing path;
- analyzing the availability message at the computer to dynamically ascertain a preferred scenario of segmentation, dispersion, and assemblage of electronic data to fulfill the request for communications service;
- determining a subcontracted processing service is required from a different service provider;
- grouping together packets of data that require the subcontracted processing service from the different service provider;
- subcontracting the grouped together packets of data to the different service provider to receive the subcontracted processing service; and
- receiving a subcontracted result of the subcontracted processing service; and
- billing for the communications service.

*Patel* does not anticipate these features. *Patel* discloses the brokering of wireless services. See U.S. Patent 7,043,225 to Patel, *et al.* at column 2, lines 5-15. A request is received, and *Patel* determines the availability of network resources from other service providers. See *id.* at column 5, lines 35-45 and at column 6, lines 1-15. Still, though, *Patel* does not teach or suggest “*determining a subcontracted processing service is required from a different service provider*” and “*grouping together packets of data that require the subcontracted processing service*.” Independent claim 1 also recites “*subcontracting the grouped together packets of data to the different service provider to receive the subcontracted processing service*” and “*receiving a subcontracted result of the subcontracted processing service*.” The patent to Patel, *et al.*, then, cannot anticipate independent claims 1, 15, and 18.

Claims 1-7, 15-16, and 18-19, then, are not anticipated by *Patel*. Independent claims 1, 15, and 18 recite features that are not taught or suggested by *Patel*. The dependent claims incorporate these same features and recite additional features. *Patel*, then, does not anticipate claims 1-7, 15-16, and 18-19. The Office is thus respectfully requested to remove the § 102 (b) rejection of these claims.

**Rejection of Claims 11-14 under § 103 (a)**

The Office rejected claims 11-14 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Patel*. Claims 11-14, however, depend from independent claim 1 and, thus, these claims incorporate the same distinguishing features. As the above paragraphs explained, *Patel* fails to teach or suggest all the features of independent claim 1. One of ordinary skill in the art, then, would not think that claims 11-14 are obvious over *Patel*. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

**Rejection of Claims 8-10, 17 & 20 under § 103 (a)**

The Office rejected claims 8-10, 17, and 20 under 35 U.S.C. § 103 (a) as allegedly being obvious over *Patel* in view of U.S. Patent 6,377,982 to *Rai, et al.* These claims, however, depend, respectively, from independent claim 1, 15, and 18. These claims, then, incorporate the same distinguishing features discussed above. As the above paragraphs explained, *Patel* fails to teach or suggest all the features of the independent claims, and *Rai* does not cure *Patel's* deficiencies. *Rai* discloses that an ISP and a wireless service provider may present a common bill. See U.S. Patent 6,377,982 to *Rai, et al.* at column 36, lines 50-57. Still, though, the combined teaching of *Patel* with *Rai* fails to teach or suggest all the features of the independent claims. One of ordinary skill in the art, then, would not think that claims 8-10, 17, and 20 are obvious over *Patel* and *Rai*. The Office is thus respectfully requested to remove the § 103 (a) rejection of these claims.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 469-2629 or [scott@scottzimmerman.com](mailto:scott@scottzimmerman.com).

Respectfully submitted,



Scott P. Zimmerman  
Attorney for the Assignee, Reg. No. 41,390